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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
NEW DELHI

OA-758/88

DATE OF DECISION

14-9-93

Smt. Gurmeet GULATI**Petitioner**Sh. B.S. Maine**Advocate for the Petitioner(s)****Versus****Respondent**U.O.I. & Ors. through Genl. Manager,
Baroda House, N.R., New Delhi**Advocate for the Respondent(s)**None**CORAM****The Hon'ble Mr. I.K. Rasgotra, Member (A)****The Hon'ble Mr. B.S. Hegde, Member (J)**

1. Whether Reporters of local papers may be allowed to see the Judgement?
2. To be referred to the Reporter or not?
3. Whether their Lordships wish to see the fair copy of the Judgement?
4. Whether it needs to be circulated to other Benches of the Tribunal?

JUDGEMENT (ORAL)

(delivered by Sh. I.K. Rasgotra, Member (A))

We have heard Shri B.S. Maine, learned counsel for the petitioner. The Petitioner is working as L.D.C. in the office of the Respondents. She took short leave for 3 months and proceeded abroad. The said leave period expired in August, 1985. In July, 1985, she applied for extension of leave for 6 months. The respondents vide their letter dated 12.12.85 advised her at her address:-

"Your extension of leave is under consideration. You must submit the medical certificate in support of your sickness immediately from a recognized Medical Practitioner."

She submitted requisite medical certificate vide her

letter dated 30-12-1985. On 20-6-85 the respondents advised

her " that her Maternity leave is under consideration.

You must submit the medical certificate in support of your maternity leave immediately from a recognised medical practitioner alongwith registration number of the Medical Officer on the Certificate".

The petitioner complied with the said order vide her letter 26.7.1986. On 30-8-86, she further informed the respondents that she has given birth to a daughter, and enclosed a copy of the birth certificate. On 10-2-87, the respondents sent a letter at her address/USA informing her that " extension of leave for one year is not agreed by the competent authority.

Join duty at once otherwise DAR action will be processed against you as per rules". She was further advised on 5.3.1987 to report to the office within 15-days, failing which DAR action will be initiated against her. On 18.3.87, the petitioner informed the Respondents that:-

" I plan to be coming back to India in the very near future. Additionally I would like to point out that a period of 15 days is tremendously short to arrange a trip overseas. I hope that you would understand my situation and allow me some more time to return." *2*

There after she sent a medical certificate on 15.4.87 issued by Dr. Sardul S. Brar M.D. stating that the petitioner was suffering from sprain in the Lumbar sacral spine and that she is not fit to travel. On 31.3.87 the respondents issued a charge sheet charging the petitioner as under:-

"That the said Smt. Gurmeet Gulati while in the capacity of clerk grade Rs 260-400 (RS) in the Electrical Branch, Baroda House, New Delhi. As she remained absent from duty with effect from 13.8.85 despite issue notice No. 186-Elect/G/10 dated 10-2-87 and 5.3.87. The said Smt. Gurmeet Gulati continuance to remained unauthorised absence contravening Rule 3(i) of Railway Services Conduct Rules, 1966."

The petitioner sent detailed reply to the charge Memo. on 24.4.87 but continued to remain in USA. On 16.4.87, the competent Authority appointed the Enquiry officer. On 24.4.87, the Enquiry Officer requested her to attend the enquiry fixed on 18.5.87 in his office at Baroda House, New Delhi. It was also stated in the said letter that in case the applicant failed to attend the enquiry, the enquiry is liable to be processed ex parte. In another communication sent on 18.5.87 she was requested to appear before the Enquiry Officer on 22.6.87. On 8.6.87, the petitioner informed the respondents that she was under the continued care of Dr. Brar for a severe sprain in Lumbar Sacral Spine. She also enclosed medical

certificate issued by the said doctor. On 17.7.87, the enquiry Officer sent a reply to the petitioner stating that her medical certificates from a Private Medical Practitioner were not in accordance with provision made in paragraph 2256 of the Railway Establishment Code Volume-II (R-II). The Inquiry Officer also reproduced the said paragraph 2256 of R-II. The said paragraph is as under:-

"If a railway servant on leave in any of the localities named in Rule 2256(S.R.252), desires, on medical grounds an extension for a longer period than fourteen days, he must satisfy the medical board at the Indian Office of the necessity for the extension. In order to do so, he must as a general rule, appear at the India office for examination by the board; but in special cases, and particularly if he be residing at a distance of more than sixty miles from London a certificate in a form to be obtained from the High Commissioner may be accepted if signed by two medical practitioners. A certificate obtained outside the United Kingdom and signed by foreigners must be attested by consular or other authority as bearing the signatures of qualified medical practitioners".

The petitioner was further informed by the Enquiry Officer vide his letter dated 2.9.87 that all the papers and the P.M.C.s submitted by you are not in order as per Railway Rules and have not been accepted by the Competent Authority. You, are, therefore, on an unauthorised absence from duty w.e.f. 15.5.85. Once again you are hereby directed to attend the enquiry on or before 25.9.87 failing

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which ex parte decision will be taken. This is the last chance and final warning". Thereafter Enquiry Officer completed the proceedings and submitted the report. Last para of the enquiry officer reads as under:-

" I was appointed as Enquiry Officer vide SSE(HQ) order dated 16.4.87 Smt. Gurmeet Gulati was advised vide letter dated 24.4.87 to appear before E.Q. on 18.5.87. Since she failed to appear on fixed date, she was once again directed vide letter dated 18-5-87 to appear on 22.6.87. She, however, vide her letter dated 8.6.87 sent another medical certificate and advised that she is not fit to travel. Vide E.O. on 21.8.87, she was also advised Railway Rules in this context. She, however, vide her letter dated 10.8.87 advised that she is taking necessary action to send correct papers. She was again advised on 2.9.87 that she would appear for enquiry on or before 25.9.87, failing which ex parte decision will be taken. She was also advised in this letter that this was the last chance and final warning. She, however, has not appeared for enquiry.

This shows that she has avoided to attend the enquiry and the charges frame against her deemed to have been proved".

Learned counsel for the petitioner

Sh.B.S.Mainee submitted that the Enquiry report submitted by the enquiry Officer was based in his assessment and understanding of the case. The documents listed in the charge-sheet relied upon are not even analysed by the enquiry officer. The enquiry officer report is not in accordance with law and deserves to be quashed and set aside.

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He further submitted that while her deptt. was advising her that her extension of leave etc. was under consideration. The enquiry officer referred to the rejection of P.M.Cs submitted by the petitioner as they were not in accordance with the rules. It was the Inquiry Officer who for the first time advised her the requirement of the rules. Before she could comply with the provisions of the rules, the inquiry was finalised.

We have carefully considered the submissions made by the learned counsel for the petitioner and perused the record carefully. It appears that no Presenting Officer was appointed by the Disciplinary Authority. The documents listed in the charge sheet do also/not appear to have been relied upon. Admittedly some of these documents are taken cognizance of the opening paragraph of enquiry report. But that is only to give the background of the case. There is no critical analysis of the documents with a view to arrive at the findings. Since the petitioner did not appear before the Enquiry Officer. The Enquiry Officer came to the conclusion that the charge sheet framed against her are deemed to have been proved. Although the enquiry officer noted that the petitioner

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has advised vide letter dated 10.8.87 that she was taking necessary action to send correct papers from the authorised Medical Practitioner from the Indian Embassy, yet. This important action was not allowed to be completed.

Learned counsel for the petitioner submitted that the petitioner was given 15 days time to appear before the enquiry officer knowing fully well that she was in the U.S.A. She was once again directed to attend the enquiry on 21.8.87 and appear before the enquiry officer, failing which ex parte decision will be taken. The Enquiry Officer submitted that enquiry report on 6.10.87 to the Disciplinary Authority. Disciplinary authority without going into the enquiry report carefully passed the order removing the petitioner from service. Appellate Authority also by a cryptic order upheld the penalty imposed by the disciplinary Authority.

It is also apparent from the enquiry report that the same has not been conducted in accordance with law. The documents listed and relied upon have not been analysed by the enquiry officer in his report. He has based his finding more on the basis of the correspondence conducted by him and the information provided by the department internally. The demands made on the petitioner

to appear before the enquiry officer within 15 days etc. were also unfair, as it was known to the respondents that she was in the United States of America. The Petitioner had also advised that she was taking steps to furnish medical certificate from the authorised Medical Officer of the Indian Embassy. Before this could be done the enquiry was concluded. In our view, therefore, the enquiry is vitiated. The disciplinary authority did not apply its mind to the facts of the case and passed an order, removing the petitioner without application of mind. The appellate authority also passed a cryptic orders without going into the details of the case. Accordingly, we set aside the enquiry report and the orders of the disciplinary and appellate authorities and quash them. The respondents, however, are not precluded from holding the further enquiry in accordance with law duly giving an opportunity to the petitioner to produce the medical certificate from the authorised Medical Attendant in accordance with the rules. No costs.


(B.S. HEGDE)

MEMBER(J)


(I.K. RASGO/RA)
MEMBER(A)